



366971



"Brooks, Patrick J."
<PBrooks@ssd.com>
06/13/2006 05:46 PM

To "Morgan, James L." <JMorgan@atg.state.il.us>, Victoria Powers <vpowers@szd.com>
cc Elise.Feldman@usdoj.gov, ebessey@kdhe.state.ks.us, Alan.Tenenbaum@usdoj.gov, piercejc@michigan.gov, Catherine Garypie/R5/USEPA/US@EPA,
bcc

Subject RE: CTA

Thanks for your comments Jim. I know you were not able to make the call, which we had on short notice today on the CTA. As far as your comments, I would state the following:

- 1) Understood
- 2) I made your first change. As far as the use of the term Persons, it does not equate to Beneficiaries.
- 3) Got it.
- 4) First, we moved that provision to Section 4.3. Second, this provision is related to removal of the Trustee and it would be odd under those circumstances to require the removed trustee to do an accounting...after all, he would have been removed for a reason and his successor would assume the reporting obligations. Third, this is ultimately a trustee issue, so I leave it in Victoria's capable hands.

I hope this helps.

From: Morgan, James L. [mailto:JMorgan@atg.state.il.us]
Sent: Tue 6/13/2006 6:30 PM
To: Victoria Powers
Cc: Elise.Feldman@usdoj.gov; ebessey@kdhe.state.ks.us; Alan.Tenenbaum@usdoj.gov; piercejc@michigan.gov; Garypie.Catherine@epamail.epa.gov; wvawest@ameritech.net; Brooks, Patrick J.; Bruce Kugler; Winters, Karen
Subject: RE: CTA

I just have not kept up with the times. It was F3d not F2d. My concern, in part, stems from having been reamed in open court by a judge when he was reviewing a consent decree he thought infringed upon his powers as judge. Similar to a comment I made early about the Court's inherent authority to modify its orders, I did not want us to be in the position of the judge thinking that we were shrinking his authority to manage Trustees he appoints. See pp.1183-84, headnote 19.

From: Victoria Powers [mailto:vpowers@szd.com]
Sent: Tuesday, June 13, 2006 5:00 PM
To: Morgan, James L.; Brooks, Patrick J.
Cc: Winters, Karen; Bruce Kugler; Elise.Feldman@usdoj.gov; Streuli, Betsey; ebessey@kdhe.state.ks.us; Alan.Tenenbaum@usdoj.gov; piercejc@michigan.gov; Garypie.Catherine@epamail.epa.gov; wvawest@ameritech.net
Subject: RE: CTA

Jim, I am continuing to review your comments, below, on the Custodial Trust Agreement on behalf of the Trustee, and I'm having trouble locating the case you referred to in your item 4. Attached is a copy of *Glaziers and Glassworkers Union v. Newbridge Securities*, but I suspect it

is not the case you want to refer me to. It is not reported at the cite you provided, 93 F.2d 1171. If you would straighten me out, I'll be able to get a better feel for what you are getting at. I don't know that the Trustee will agree to continue to perform general duties after it has been removed by motion of another party, but I'll look at the case and provide a further response. Thanks for your help.

Victoria

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-----Original Message-----

From: Morgan, James L. [<mailto:JMorgan@atg.state.il.us>]

Sent: Tuesday, June 13, 2006 12:02 PM

To: Brooks, Patrick J.

Cc: Winters, Karen; Bruce Kugler; Elise.Feldman@usdoj.gov; Streuli, Betsey; ebessey@kdhe.state.ks.us; Alan.Tenenbaum@usdoj.gov; piercejc@michigan.gov; Garypie.Catherine@epamail.epa.gov; Victoria Powers; vwawest@ameritech.net

Subject: RE: CTA

In addition to the comments from Alan Tenenbaum, I would note the following:

- 1) Our concurrence with a draft of the CTA carries the caveat that the settlement agreement must address any State specific concerns;
- 2) The revisions to Par. 4.7 start to address the concerns Illinois raised but may end up injecting more confusion. First, why is the second and third sentences in this provision and not 4.6? Second, capitalizing persons in those sentences now appears to mean that the persons who are entitled to compensation are those to whom responsibilities are owed under the Agreement rather than the third parties fulfilling those responsibilities. If I am looking a gift horse in the mouth just tell me and I will wait to collect on this right of compensation.
- 3) In par.2.6(b)'s last sentence, there is still a reference to Distribution Notice Parties when all other references are to Disposition Notice Parties.
- 4) Section 5.3(c): There appears to be a common law requirement for the Trustee to provide an accounting to the Court of his administration of the trust before he can be relieved of the management of the Trust. See *Glaziers and Glassworkers Union v. Newbridge Securities*, 93 F.2d 1171. If the phrase "and if the Court or any appellate court so directs" was intended to address this then we may be covered. If not we could tack on to the end of the last sentence this phrase: "and satisfaction of any duties owed the Court" and thereby not leave the Trustee in limbo.

From: Brooks, Patrick J. [<mailto:PBrooks@ssd.com>]

Sent: Tuesday, June 13, 2006 10:02 AM

To: Morgan, James L.

Cc: Winters, Karen

Subject: CTA

Jim:

Do you have any comments on CTA? We would like to finalize today. Also, we will get you draft settlement agreement this afternoon.

Patrick

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